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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1116

E. M. WHITTENTON, INC., and SECURITY INSURANCE GROUP,
Petitioners,

vs.

PAUL W. NEIGHBORS, JR., AND THE STATE OF FLORIDA, DEPARTMENT OF COMMERCE, DIVISION OF LABOR AND EMPLOYMENT OPPORTUNITIES,
Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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RESPONDENT'S BRIEF

The Respondent, Paul W. Neighbors, Jr., is an employee who was awarded workmen's compensation benefits by a Florida Judge of Industrial Claims. The award was affirmed by the Florida Industrial Commission and the Florida Supreme Court. Respondent will be referred to in this brief as the Claimant and Petitioner will be referred to as the Employer.

The following symbol will be used:

R—Record on Appeal.

POINT ON APPEAL

IS AN AGREEMENT FOR PAYMENT OF WORKMEN'S COMPENSATION, EXECUTED BY AN EMPLOYEE WHILE HOSPITALIZED AND IN NEED OF MONEY IN NORTH CAROLINA, WHICH PROVIDES FOR WEEKLY PAYMENTS IN A CERTAIN AMOUNT BUT LEFT BLANK AS TO THE LENGTH OF TIME THE PAYMENTS ARE TO BE MADE, ENTITLED TO FULL FAITH AND CREDIT IN FLORIDA?

STATEMENT OF FACTS

The Claimant, a resident of North Carolina, was hired by the Employer in North Carolina to drive a truck throughout the east coast and midwest of the United States. He was injured in an accident in Florida while driving his employer's truck to Fort Myers, Florida where he was to pick up a load of tomatoes and transport them to Philadelphia. The accident occurred near Wauchula, Florida and he was confined in the Wauchula Hospital for 19 days after which he was transferred to his home in North Carolina. The above facts are undisputed and are also set forth in Petitioner's brief.

The evidence showed that the Employer is a Florida corporation, domiciled in Fort Myers (R-25). The Claimant expended 60% of his time in hauling produce from Fort Myers, Florida (R-43). The Employer had six trucks which traveled out of his Fort Myers headquarters, and Claimant's truck was titled and licensed in Florida (R-25, 44).

After his initial hospitalization in Florida, the Claimant was transferred to a hospital in North Carolina where he was advised by an adjuster for the insuror of the Employer that a certain form *had* to be signed in order for the

Claimant to receive workmen's compensation benefits (R-28). The form was completely blank at the time the Claimant signed it, and it was later filled in (R-28). The Claimant did not know what the form was, but only knew that he had to sign it in order to receive workmen's compensation benefits. He had not been working for over a month, and he testified that he would have signed anything in order to receive his workmen's compensation (R-50).

There was never a claim filed in North Carolina, nor was there ever a hearing in North Carolina in regard to the workmen's compensation benefits available to the Claimant (R-29).

The form itself (R-52), merely states that the Employer will undertake to pay compensation at a certain rate beginning at a certain date. The space wherein it is said that the compensation is to be continued for a certain period of time is blank, and the words "to be determined" have been inserted. The form further provides that it is required under North Carolina law and that there are penalties for failure to file such a form.

It is apparently the Employer's position that this form, executed under conditions of duress while Claimant was hospitalized and in need of funds, which was executed by the Claimant in blank and which still has not been completely filled in as regards the period of time for which compensation payments were to be made, is entitled to full faith and credit as a workmen's compensation award.

ARGUMENT

Is an Agreement for Payment of Workmen's Compensation, Executed by an Employee While Hospitalized and in Need of Money in North Carolina, Which Provides for Weekly Payments in a Certain Amount but Left Blank As to the Length of Time the Payments Are to Be Made, Entitled to Full Faith and Credit in Florida?

The Employer has devoted much of his argument to a discussion of the case law of North Carolina, which cases apparently hold that a form such as was executed in the present case may become an award in North Carolina and enforceable by court decree.

The Claimant does not dispute the holding of the cases in North Carolina or the statutory provisions of North Carolina which may provide that the form executed by the parties in the present case is a workmen's compensation award. The important issue on this appeal, however, is not how this form is considered in the state where it was executed, North Carolina, but whether the form is a judgment which is entitled to full faith and credit as required by Article IV, Sec. 1 of the United States Constitution.

The very case on which the Employer relies, *Magnolia Petroleum Co.* v. *Hunt*, 320 U.S. 430, 65 S.Ct. 208, 88 L.Ed. 49 (1943), makes it clear that the form signed by the parties in this case is not that type of a judgment or workmen's compensation award which is entitled to be given full faith and credit. The Employer urges that the facts in *Magnolia Petroleum* are more similar to the present case than other cases of this Court on this topic, however the facts of *Magnolia Petroleum* are quite distinguishable. The employer had employed the claimant in Louisiana and in the course of his employment the claimant traveled

to Texas and was injured. He filed a claim with the Texas Industrial Accident Board, which was set for a hearing on the merits of the claim. The board entered an award for total disability for a limited period of time and also partial disability. The employee was notified that he could take an appeal if he was dissatisfied with the award, but no appeal was taken and the award became final. The employee subsequently instituted proceedings in Louisiana to recover workmen's compensation benefits. Thus in *Magnolia Petroleum* a claim was filed and a hearing occurred from which there was a right to appeal. In the present case there was no claim filed, no hearing and no judicial or administrative proceedings of any nature whatsoever.

All through the opinion in *Magnolia Petroleum* this Court speaks of rights being "adjudicated", and judgments being enforced. Can it be said that there were any rights adjudicated in North Carolina in the present case?

This Court recognized in *Magnolia Petroleum* that the full faith and credit clause places a judgment on a different footing from a statute or other law of a state, and that is the fallacy in the Employer's argument. The Employer's argument is that the case law of North Carolina provides that a form signed by the parties in this case is an award of workmen's compensation which is enforceable in the Courts. The Employer then makes the argument that since the case law of North Carolina has established the form as an award, it must be entitled to full faith and credit in Florida.

By refusing to recognize the form as a judgment entitled to full faith and credit, Florida has done nothing more than refuse to follow the *case law* of North Carolina, which is not entitled to full faith and credit.

In *Magnolia Petroleum* this Court referred to two of its previous opinions wherein it was held that the state of the employer and employee may apply its own compensation law rather than the law of the state where the injury occurred. *Alaska Packers Ass'n* v. *Industrial Accident Commission*, 55 S.Ct. 518, 294 U.S. 532, 79 L.Ed. 1044 (1935). This Court further recognized that the state of the place of the injury is also free to apply its own law to the exclusion of the law of the state of the employer and employee. *Pacific Employer's Insurance Co.* v. *Ind. Acc. Comm.*, 306 U.S. 493, 59 S.Ct. 629, 83 L.Ed. 940 (1939).

In the present case the State of Florida has not violated the full faith and credit clause but has simply applied the Florida Workmen's Compensation Act rather than the case law of North Carolina.

In *Pacific Employer Insurance Co.* v. *Ind. Acc. Comm.*, supra, this Court stated:

> "Here, California legislation not only conflicts with that of Massachusetts providing compensation for the Massachusetts employee if injured within the state of California, but it expressly provides, for the guidance of its own commission and courts, that 'No contract, rule or regulation shall exempt the employer from liability for the compensation fixed by this act.' The Supreme Court of California has declared in its opinion in this case that it is the policy of the state, as expressed in its Constitution and Compensation Act, to apply its own provisions for compensation, to the exclusion of all others, and that 'It would be obnoxious to that policy to deny persons who have been injured in this state the right to apply for compensation when to do so might require physicians and hospitals to go to another state to collect charges for medical care and treatment given to such persons.' [10 Cal.2d 567, 75 P.2d 1063].

> Full faith and credit does not here enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it." 59 S.Ct. 629, 634.

It is thus well established that Florida is not required to apply either the workmen's compensation act or the case law of North Carolina in regard to this accident which occurred in Florida.

A succinct summary of the reasons for applying the law of Florida to this accident which occurred in Florida, are summarized in *Larson's Workmen's Compensation Law,* Vol. III, §87.23, Page 382, wherein it is stated:

> "This symmetry and consistency is achieved at the expense of a consideration of much more practical weight: the argument, developed in the later constitutional law cases, that there are several independent sources of interest in a single injury, which are not mutually exclusive. As the *Pacific Employers* case held, the physical presence of the injured man within the state must concern the state. His medical and hospital bills are owed to local residents, who should not be required to go to foreign states for payment; the witnesses to the accident are within the state, and most of the best evidence bearing on the circumstances of the injury; the state's safety laws and standards may be involved; and, as the *Alaska Packers* case stressed, the mere presence of a disabled and destitute human being within a state's borders is a social problem of concern to that state since he may become a public charge if not provided for by compensation law." See *Alaska Packers Association* v. *Industrial Accident Commission,* 55 S.Ct. 518, 294 U.S. 532, 79 L.Ed. 1044 (1935).

The fact that the Employee in the present case accepted voluntary payment of compensation and that the

agreement in this case was approved by the Industrial Commission of North Carolina is of no effect.

In *Larson's Workmen's Compensation Law*, Vol. III, §85.50, Page 364, it is stated that: ". . . prior voluntary payment of compensation accepted by the employee under the laws of one state does not detract from the employee's statutory right to an award in another state, whether the agreement for compensation had received Commission approval or not." See *Cline* v. *Byrne Doors, Inc.*, 37 N.W.2d 630 (Mich. 1949), *Franklin* v. *George P. Livermore, Inc.*, 270 P.2d 983 (N.M. 1954), and *Della Vecchia* v. *World Scope Publishing Co.*, 165 A.2d 872 (N.J. 1960).

Although the agreement signed by the parties in the present case (R-52) provides that the parties are bound by the provisions of the North Carolina Workmen's Compensation Act, this provision is invalid in Florida. Fla. Stat. §440.21(2) provides:

> "No agreement by an employee to waive his right to compensation under this chapter shall be valid. . . ."

CONCLUSION

The document in the present case which the Employer contends is entitled to full faith and credit is simply an agreement signed by the parties for compensation to be paid under the North Carolina Workmen's Compensation Act. Although the North Carolina case law may provide that this agreement is an award enforceable by court decree, the State of Florida is not bound under the full faith and credit clause to give full force and effect to the case law of North Carolina. Since the accident occurred in Florida, it has an equal or greater interest than North Carolina in providing workmen's compensation benefits to the Claimant, and Florida has not violated the full faith

and credit clause simply by refusing to apply the North Carolina Workmen's Compensation Act or the North Carolina case law construing the act.

There was no adjudication of the rights of either of the parties in North Carolina. If there had been such an adjudication with an award from which there was a right to appeal, the Employer would probably now have a valid argument that it was entitled to full faith and credit in Florida. A mere agreement, executed by the parties while the Claimant was hospitalized and under duress, can by no stretch of the imagination be considered a judgment entitled to full faith and credit. Accordingly the Petition for Certiorari should be denied.

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